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THIS IS NOT A DISCIPLINARY
ACTION OR FINAL DECISION
OF THE BOARD

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11
12 In the Matter of the Accusation Against:

Case No. AC-2010-36

13 RONALD KLINGENSMITH
P. O. Box 1913
14 Escondido, CA 92033

A C C U S A T I O N

15 CPA Certificate No. 50448,

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

22 2. On or about May 26, 1988, the California Board of Accountancy issued Certified
23 Public Accountant (CPA) Certificate Number 50448 to Ronald Klingensmith (Respondent). The
24 CPA license was in full force and effect at all times relevant to the charges brought herein, and
25 will expire on May 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Code section 5100 states:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

". . . .

"(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

". . . .

"(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

". . . ."

5. California Code of Regulations, Title 16, section 52, states:

"(a) A licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested.

"(b) A licensee shall respond to any subpoena issued by the Board or its executive officer or the assistant executive officer in the absence of the executive officer within 30 days and in accordance with the provisions of the Accountancy Act and other applicable laws or regulations.

"(c) A licensee shall appear in person upon written notice or subpoena issued by the Board or its executive officer or the assistant executive officer in the absence of the executive officer.

"(d) A licensee shall provide true and accurate information and responses to questions, subpoenas, interrogatories or other requests for information or documents and not take any action to obstruct any Board inquiry, investigation, hearing or proceeding."

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6. California Probate Code section 16000 states:

"On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to this division."

7. California Probate Code section 16002, subdivision (a), states:

"The trustee has a duty to administer the trust solely in the interest of the beneficiaries."

8. California Probate Code section 16060 states:

"The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration."

9. California Probate Code section 16061 states:

"Except as provided in Section 16069, on reasonable request by a beneficiary, the trustee shall report to the beneficiary by providing requested information to the beneficiary relating to the administration of the trust relevant to the beneficiary's interest."

10. California Probate Code section 16062, subdivision (a), states:

"Except as otherwise provided in this section and in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustee, to each beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed."

COST RECOVERY

11. Section 5107, subdivision (a), of the Code states:

"The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Breach of Fiduciary Responsibility)**

3 12. Respondent is subject to disciplinary action under Code section 5100, subdivision (i),
4 for breach of fiduciary responsibility in administering the Carpenter Charitable Remainder Trust
5 as its trustee. The circumstances are as follows:

6 A. On or about November 10, 1997, Respondent Ronald Klingensmith accepted and
7 became the sole trustee for the Carpenter Charitable Remainder Trust. The Trustors of the trust
8 are F.C. and N.C. Under the terms of the trust, the Trustors are to receive a percentage of the fair
9 market value of the trust, to be paid in equal quarterly installments over the year. For the year
10 ending 2008, the Trustors did not receive their last two quarterly income distributions from the
11 trust. In addition, as of March 2009, the Trustors had not received their annual accounting of the
12 trust in over two years. For the years 2007 and 2008, the Trustors were also not provided their
13 Schedule K-1s, which reports income distributions from the trust for tax purposes.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Respond to Board Inquiry)**

16 13. Respondent is subject to disciplinary action under Code section 5100, subdivision (g),
17 in conjunction with California Code of Regulations, Title 16, section 52, subdivision (a), for
18 failing to respond to the Board's inquiry regarding administration of the Carpenter Charitable
19 Remainder Trust. The circumstances are as follows:

20 A. On or about April 7, 2009, the Board sent Respondent an inquiry letter regarding the
21 allegations set forth in paragraph 12A above, which are hereby incorporated by reference. The
22 letter requested, *inter alia*, that Respondent provide a copy of the most recent trust accounting he
23 had prepared, a copy of the most recent tax return filed for the trust, an explanation as to why
24 distributions had not been made as required by the trust, and explanation as to why a trust
25 accounting had not been provided to F.C. for 2007, within 30 days. No response was received
26 from Respondent.

27 B. On or about June 15, 2009, the Board faxed the April 7, 2009 inquiry letter to
28 Respondent's place of business and requested that he respond to it. On this same date, the

1 investigator for the Board also called Respondent at his work and left his name and number with
2 Respondent's secretary. No response was received by Respondent.

3 C. On or about September 22, 2009, the Board sent Respondent another letter, enclosing
4 the April 7, 2009 letter, and again requesting a response to it. No response was received by
5 Respondent.

6 THIRD CAUSE FOR DISCIPLINE

7 (Failure to Respond to Board Subpoena)

8 14. Respondent is subject to disciplinary action under Code section 5100, subdivision (g),
9 in conjunction with California Code of Regulations, Title 16, section 52, subdivision (b), for
10 failing to respond to the Board's subpoena regarding administration of the Carpenter Charitable
11 Remainder Trust. The circumstances are as follows:

12 A. On or about October 29, 2009, the Board issued a subpoena to Respondent requesting
13 documentation and information regarding the allegations set forth in paragraph 12A above, which
14 are hereby incorporated by reference. The subpoena ordered, *inter alia*, that Respondent provide
15 a copy of the most recent trust accounting he had prepared, a copy of the most recent tax return
16 prepared for the trust, an explanation as to why distributions had not been made as required by the
17 trust, and explanation as to why a trust accounting had not been provided to F.C. for the 2007
18 calendar year. No response was received from Respondent.

19 PRAYER

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the California Board of Accountancy issue a decision:

22 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
23 Accountant Certificate Number 50448 issued to Ronald Klingensmith;

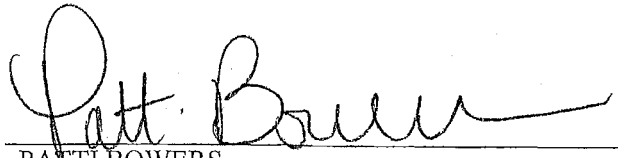
24 2. Ordering Ronald Klingensmith to pay the California Board of Accountancy the
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
26 Professions Code section 5107;
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3. Taking such other and further action as deemed necessary and proper.

DATED: MARCH 28, 2011



PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

SD2010702646